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Supreme Court, U.S.
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No. 93-2042

In the Supreme Court of the United States

OCTOBER TERM, 1994

STATE OF MICHIGAN, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the parties' stipulation that a State and its officials fulfilled their constitutional obligations under most provisions of a prison-conditions consent decree divested the district court of jurisdiction to determine whether compliance was actually achieved before dismissing certain decree provisions.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-19a) is reported at 18 F.3d 348. The opinions of the district court (Pet. App. 30a-39a, 47a-60a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on March 4, 1994. A petition for rehearing was denied on March 24, 1994. The petition for a writ of certiorari was filed on May 31, 1994. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. In 1984, following an investigation, the Attorney General determined that there was cause to believe that

petitioners were subjecting inmates in three of their correctional facilities to egregious or flagrant conditions in violation of the Constitution. The United States filed suit pursuant to the Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. 1997 *et seq.* Pet. App. 87a-88a. In lieu of contesting the allegations, petitioners entered into a settlement embodied in a Consent Decree and incorporated State Plan for Compliance. Pet. App. 2a, 4a; *id.* at 87a-108a (Consent Decree), 109a-208a (State Plan). The Consent Decree and Plan covered three facilities: Marquette Branch Prison, Michigan Reformatory, and the State Prison of Southern Michigan. Those documents required improvements in the areas of medical care, fire safety, sanitation, safety and hygiene, crowding and protection from harm, and access to courts and legal mail. *Ibid.*

The stated purpose of the Consent Decree was "to assure the constitutionality of the conditions under which prisoners are incarcerated in the subject prisons." Pet. App. 88a-89a. The Plan set forth in detail the measures which the parties and the court deemed "adequate to bring [petitioners] into full compliance and thereby satisfy the terms and provisions of th[e] Decree." *Id.* at 99a. Petitioners expressly consented to the district court's ongoing jurisdiction. *Id.* at 105a-106a. The Decree called for continuous monitoring and periodic reporting to the court regarding compliance. *Id.* at 100a-101a, 102-103a. It also required notice to the court of "each failure to comply with the provisions of the State Plan," and provided for hearings regarding noncompliance "on request of either party or on the Court's own motion." *Id.* at 99a. No provision of the Decree or Plan could be modified without the court's approval. *Id.* at 106a, 100a.

The Decree provided for continued court jurisdiction until petitioners had complied with "all of the terms of th[e] Decree." Pet. App. 106a. At such time, the Decree provided, petitioners could "apply to terminate the jurisdiction of th[e] Court." *Ibid.* The court entered the Decree as its own judgment, and permanently enjoined the petitioners "from continuing the alleged unconstitutional practices and acts complained of; and * * * from continuing to confine persons under complained of unconstitutional conditions." *Id.* at 107a.

In 1992, after eight years of monitoring and periodic compliance hearings, the parties filed a joint motion pursuant to Federal Rule of Civil Procedure 60(b)(5) and (6) to dismiss most of the provisions of the Consent Decree, except those dealing with mental health. Pet. App. 2a-3a, 5a, 66a. In support of their motion the parties stipulated that "Defendants are in substantial compliance, and have achieved the goals of the Decree by assuring at least constitutional conditions" with respect to all areas apart from mental health care. *Id.* at 2a-3a, 5a, 61a. The parties also stipulated to a proposed modification of the Decree's jurisdiction provision. Under the Decree as written, termination of the court's jurisdiction was "an all or nothing matter," *id.* at 5a, such that the court retained jurisdiction over the whole decree until all of its terms were met. The proposed modification would have allowed either party to seek earlier, piecemeal release from those Decree provisions governing areas where "compliance with constitutional requirements" had been achieved. *Id.* 5a-6a, 62a.

2. a. The district court granted in part and deferred decision in part on the parties' stipulation and motion to dismiss. Pet. App. 6a-9a, 24a, 40a-41a. The court accepted the parties' proposal that partial dismissal of the Consent Decree be allowed where compliance with

discrete portions is shown, and therefore vacated the sentence of the Decree requiring compliance with all the Decree's terms prior to termination of the court's jurisdiction as to any portion. *Id.* at 6a-7a, 41a, 50a-51a. It did not accept the precise wording of the parties' substitute, however, which was framed in terms of "compliance with constitutional requirements" in the abstract, *id.* at 62a, as opposed to compliance with the Decree. The court explained:

> The Court is not opposed, in principle, to the partial dismissal of portions of the Consent Decree when the Defendants have achieved a satisfactory level of compliance with the portions involved and when the portions can be clearly severed from other portions of the Decree that will remain in force. However, the Court believes that the approach to determining compliance proposed by the parties un[n]ecessarily complicates matters by requiring constitutionally grounded justifications for terminating portions of the Decree, when all that may be necessary are assertions of compliance with the terms of the Decree, with evidence of compliance where necessary.

Id. at 50a-51a. The court nonetheless invited the parties "to file future motions to modify or terminate portions of the Decree or its associated plans." *Id.* at 53a.[1] Such motions, the court specified, could set forth "the parties'

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[1] The court referred to "plans" in the plural because the Decree required petitioners to submit supplemental plans at specified times in addition to the original State Plan for Compliance, and required that the supplemental plans be "appended to the State Plan and subject to enforcement in accordance with the provisions of th[e] Decree." Pet. App. 101a-102a.

positions concerning constitutional requirements." *Id.* at 46a.

Before dismissing any portion of the decree, the district court sought an updated review and report regarding compliance. Pet. App. 7a, 43a-44a, 53a-54a. The court observed that evidence to support the parties' assertions of partial compliance "may not, in some instances, be current." *Id.* at 53a. The court called upon the Independent Expert, who had been appointed by the court to assist in monitoring the Decree, to review the provisions of the Decree and to list those that had been fully satisfied, and also to determine the relationship, if any, between the satisfied provisions and those still unfulfilled. *Id.* at 7a, 44a-45a. It provided an opportunity for the parties and *amici* to comment on the Independent Expert's list. *Id.* at 45a.

The court's July 2, 1992, order also established a sequence for consideration of the parties' joint motion seeking dismissal of aspects of the Decree. Pet. App. 55a-59a. It held the motion in abeyance insofar as it sought to dismiss medical care provisions, on the ground that those provisions should be considered jointly with the mental health care aspects, as to which the parties agreed compliance had not been achieved. *Id.* at 41a-42a, 56a. The court noted that under the Decree, "Medical Care compliance has always been considered in conjunction with Mental Health Care compliance. The reason for joint consideration is that mental health care, as a form of medical care, is inextricably related to medical care." *Id.* at 56a.

The court further specified that the first round of compliance investigations and actions on the motion to dismiss should relate only to the Marquette Branch Prison and the Michigan Reformatory. Pet. App. 8a, 59a. It held the motion in abeyance insofar as it related to the

State Prison of Southern Michigan (SPSM), the largest of the three facilities. *Id.* at 42a, 57a-59a. The court recognized that "a complete assessment of compliance at [SPSM], which is a massive prison complex housing over 5,000 prisoners, will require a substantial commitment of time and resources by the parties." *Id.* at 57a. Moreover, the court noted that petitioners were involved in implementation of a consent decree in a separate case brought by private parties also addressing conditions at SPSM, *Hadix* v. *Johnson*, No. 80:CV:73581 (E.D. Mich.), which the court predicted "may constitute a substantial change in physical and operational conditions at SPSM that would warrant dismissal" of Decree provisions in this case. *Id.* at 57a-58a. The court thus decided to stay temporarily its final compliance assessment of SPSM. *Id.* at 42a, 58a-59a.

b. On December 1, 1992, following receipt and review of the Independent Expert's list, the court dismissed the first set of provisions as to which it was satisfied compliance had been shown. Pet. App. 23a-29a. The court found compliance with selected provisions of the State Plan regarding sanitation, safety and health, fire safety, and overcrowding and protection from harm at the Marquette Branch Prison and the Michigan Reformatory, and dismissed those provisions. *Id.* at 10a, 34a-37a. The court continued to hold the motion to dismiss in abeyance insofar as it addressed provisions governing access to the courts, however, in light of the fact that the State Plan required access only to law books, and recent decisions of the Sixth Circuit suggested that "meaningful access to the [c]ourts" may "require assistance beyond law books and simplified pleading forms." *Id.* at 37a; see *id.* at 27a, 10a-11a. The court called for further reports on the provisions it had not yet dismissed. *Id.* at 11a, 28a.

3. Without waiting for the district court to complete its review of the joint motion to dismiss, petitioners appealed. The court of appeals affirmed. The court rejected petitioners' contention that the district court was bound by the parties' stipulation of compliance and lacked jurisdiction independently to review whether the requirements of the Consent Decree had been met. Pet. App. 3a, 12a. The court emphasized that a Consent Decree is both a voluntary settlement and a judicial order subject to "continued judicial policing." *Id.* at 12a, quoting *Lorain NAACP* v. *Lorain Bd. of Educ.*, 979 F.2d 1141, 1148 (6th Cir. 1992), cert. denied, 113 S. Ct. 2998 (1993). Because the court places its "power and prestige" behind a consent decree,

> a district court is not simply empowered, but is actually obligated, to exercise its independent judgment regarding compliance with a decree. Otherwise, a court would simply become a rubber stamp for the parties, and the policing role of the court would become meaningless.

Pet. App. 13a. "Once entered, the decree became the *court's* judgment, subject to its monitoring." *Ibid.* A stipulation of the parties to the decree thus "does not deprive a court of its inherent supervisory authority under Fed. R. Civ. P. 60(b)." *Id.* at 15a.

The court of appeals also rejected petitioners' contention that the district court exceeded its authority by referring to the State Plan in determining whether petitioners had achieved compliance with their constitutional obligations under the decree. Pet. App. 16a-19a. The court held that the procedure the district court employed in considering the motion to dismiss "conform[ed] to the modification provisions of the decree and with existing law." *Id.* at 19a. The court of appeals

explained that because "[t]he state plan is an integral and important component of the consent decree," which "provides a detailed, concrete way to satisfy the broad goals laid out in the decree," *id.* at 17a, and "[t]he plain language of the consent decree provides that compliance with the state plan would be considered compliance with the Constitution," *id.* at 16a, the district court was entitled to "first review compliance under the plan," *id.* at 18a. "[S]ince compliance had always been measured against the state plan," the district court appropriately found the Plan "was the easiest place to begin." *Id.* at 18a.

The court of appeals emphasized, however, that the district court neither "require[d] compliance with all the terms of the plan," Pet. App. 18a, nor suggested "that compliance with the state plan [was] the only means to satisfy compliance with the Constitution," *id.* at 16a-17a. Rather, the court was following a two-step procedure, first dismissing provisions of the decree for which it found compliance under the Plan, and then entertaining motions regarding the remaining provisions. "In these motions, the parties could argue the relevant constitutional standards and show that compliance with the full terms of the plan should not be required." *Id.* at 19a. The court of appeals concluded that if petitioners wish "to argue that the plan goes too far and that constitutional requirements have already been met, [they] should first raise these issues in the district court, following the procedure provided by that court and the consent decree." *Ibid.*

ARGUMENT

1. Petitioners contend that the district court was obligated immediately upon receipt of the parties' stipulation of partial compliance with the Consent

Decree to dismiss every provision of the Decree except the mental health provisions, as to which the parties stipulated noncompliance. Pet. 32-54. In petitioners' view, the district court exceeded its authority by seeking independently to confirm the accuracy of the parties' stipulation, and to make its own legal determination regarding which Decree provisions to sever and dismiss and which to preserve pending full compliance with remaining obligations.

No party asserts that the district court lacked the power to grant in full the motion to modify the Decree by dismissing certain aspects of it; indeed, the district court had devised procedures and a schedule, and appeared to be in the process of granting the motion when petitioners appealed. We cannot agree with petitioners, however, that the parties' stipulation divested the district court of its inherent authority and duty to satisfy itself, before granting the requested modifications, that obligations of the Decree had actually been discharged such that the requested modifications were warranted. Nor do we believe that the district court lacked discretion to tailor the appropriate modification.

The district court correctly retained jurisdiction and exercised its discretion to review the parties' stipulation and motion to dismiss. Consent decrees are "subject to continuing oversight and interpretation by the court." *Local No. 93, Int'l Ass'n of Firefighters* v. *City of Cleveland*, 478 U.S. 501, 523 n.13 (1986). The district court has the power to enforce and modify them, see *Rufo* v. *Inmates of Suffolk County Jail*, 112 S. Ct. 748 (1992), and to determine when they should be terminated, or whether jurisdiction over them should be relinquished in stages, because their objectives have been achieved in full or in part, see *Freeman* v. *Pitts*, 112 S. Ct. 1430, 1445-1446 (1992). Termination of consent decree pro-

visions under Federal Rule of Civil Procedure 60(b) calls for an exercise of sound judicial discretion in light of all the circumstances. See *Rufo*, 112 S. Ct. at 758; *id.* at 765 (O'Connor J., concurring); *Freeman*, 112 S. Ct. at 1446 (describing factors courts should consider). Where modification is warranted, it is the duty of the court to "consider whether the proposed modification is suitably tailored" to the circumstances that justified it. *Rufo*, 112 S. Ct. at 760.

Petitioners' effort to treat the stipulation as definitive and to remove the district court from the process of closing this case conflicts with the binding terms of the Decree itself. The parties voluntarily specified that the district court would have the authority to determine the circumstances under which the Decree could be modified or terminated. The parties were required to apply to the district court for dismissal of the Decree. Pet. App. 15a. The Decree forbade modification of the terms of the Decree or Plan without the court's approval. *Ibid.*; see *id.* at 100a, 106a.

The district court's independent review is especially warranted to protect the public's interest in the Decree in this case, because decrees in "institutional reform litigation" such as this "reach beyond the parties involved directly in the suit and impact on the public's right to the sound and efficient operation of its institutions." *Rufo*, 112 S. Ct. at 759, quoting *Heath* v. *DeCourcy*, 888 F.2d 1105, 1109 (6th Cir. 1989). The existence of a stipulation by the parties, like a prosecutorial confession of error, "do[es] not 'relieve [a] [c]ourt of the performance of the judicial function.'" *Sibron* v. *New York*, 392 U.S. 40, 58 (1968), quoting *Young* v. *United States*, 315 U.S. 257, 258 (1942). The district court acted properly in retaining jurisdiction to evaluate a stipulation and motion that had potentially

far-reaching effects on the prison population whose rights the Decree obligated the court to protect.[2]

2. Petitioners assert that they are required only to comply with the Constitution, and not with any aspect of the Plan that may create obligations beyond what the court could have imposed as a remedy if the case had been litigated and constitutional violations found. Pet. 47-57. They contend, in effect, that the district court overreached by considering, as one step in its review of the parties' stipulation and motion to dismiss, whether petitioners have complied with the State Plan they themselves had agreed to as part of the Decree.

That contention is hypothetical. The provisions of the Decree and Plan are confined to remedying consti-

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[2] Petitioners argue that the court of appeals' decision is inconsistent with this Court's decisions in *New Hampshire* v. *Maine*, 426 U.S. 363 (1976); *Vermont* v. *New York*, 417 U.S. 270 (1974) (per curiam), and *Pasadena City Bd. of Educ.* v. *Spangler*, 427 U.S. 424 (1976). Pet. 32-36, 44. *New Hampshire* and *Vermont* both dealt with circumstances under which States' agreements with one another may be entered as consent decrees; neither addressed the proposed dismissal of all or part of a decree under Federal Rule of Civil Procedure 60(b). *Vermont* actually provides support for the district court's action here, because the Court refused to approve a proposed consent decree, the execution of which would have required the Court to "act[] more in an arbitral rather than a judicial manner." 417 U.S. at 276-277.

In *Spangler*, "[n]o one dispute[d] that the initial implementation of th[e student reassignment] plan accomplished th[e] objective" of the consent decree "of providing the appropriate remedy for previous racially discriminatory attendance patterns." 427 U.S. at 436-437. The parties here, in contrast, never contended that all objectives of the decree had been accomplished. Moreover, this Court declined in *Spangler* to dissolve the injunction or terminate the district court's jurisdiction, but remanded to the lower courts, which are, as an initial matter, "in a far better position" to determine whether to do so. *Id.* at 440-441.

tutional violations. See *United States* v. *Michigan*, 940 F.2d 143, 147 (6th Cir. 1991) (describing Consent Decree, including Plan, as tailored to address only conditions of confinement rising to the level of constitutional violations). As the court of appeals noted, "[t]he plain language of the consent decree provides that compliance with the state plan would be considered compliance with the Constitution," and "[t]he plan provides a detailed, concrete way to satisfy the broad goals laid out in the decree." Pet. App. 16a-17a. Petitioners have not identified any aspect of the Plan calling for corrective action exceeding that which is appropriate to remedy the asserted constitutional violations.[3]

Petitioners' contention is also premature. As the court of appeals held, if petitioners wish "to argue that the plan goes too far and that constitutional requirements have already been met, [they] should first raise these issues in the district court." Pet. App. 19a. The district court's schedule for reviewing the motion to dismiss provided an opportunity for the parties to do so, *id.* at 19a, 46a, but petitioners chose not to take advantage of it. Instead, they sought appellate review before the district court had completed its adjudication of the motion. The district court has yet to deny any aspect of the motion on any ground, including any failure by petitioners to comply with the State Plan. In the absence of final disposition of the parties' motion in an order appealable under 28 U.S.C. 1291 or 1292, it is

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[3] Having devised and agreed to the Plan themselves, petitioners are ill positioned to object to the district court's use of the Plan as a benchmark. Indeed, an injunctive decree that is specific (as here), going beyond reciting a general duty to comply with the Constitution, is generally viewed as beneficial to defendants by providing notice of and concrete definition to their obligations.

highly doubtful that the court of appeals had jurisdiction of petitioners' appeal at this juncture. See *Cohen* v. *Beneficial Loan Corp.*, 337 U.S. 541, 546 (1949). In any event, review by this Court would be premature.

Finally, petitioners' theory has already been rejected by this Court. "[S]tate and local officers in charge of institutional litigation may agree to do more than that which is minimally required by the Constitution to settle a case and avoid further litigation." *Rufo*, 112 S. Ct. at 764; see *id.* at 762-763. See also *Local No. 93, Int'l Ass'n of Firefighters*, 478 U.S. at 525 ("a federal court is not necessarily barred from entering a consent decree merely because the decree provides broader relief than the court could have awarded after a trial").[4] Faced with a motion to modify a decree that may in some respects exceed the constitutionally required minimum, the court "should not strive to rewrite [the decree] * * * so that it conforms to the constitutional floor." *Rufo*, 112 S. Ct. at 764.

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[4] The "consent decree must," of course, " 'com[e] within the general scope of the case made by the pleadings,' and must further the objectives of the law upon which the complaint was based." *Local No. 93, Int'l Ass'n of Firefighters*, 478 U.S. at 525 (citations omitted).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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